## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the District Court of the United States for the Eastern District of Pennsylvania has not yet been reported nor has the opinion of the Circuit Court of Appeals for the Third Circuit.

II.

(a) The date the judgment of the Circuit Court of Appeals from which Petition for Certiorari was filed was July 14, 1941.

(b) This Petition for Certiorari was filed on the 9th day of October, 1941.

(c) The statutory provision which sustains jurisdiction of this Court is Judicial Code, section 240, as amended (Section 347, Tit. 28, U. S. C. A.). Jurisdiction of this Petition for Certiorari is also found in Rule 38 (5b), Supreme Court Rules, 1939.

(d) The United States Circuit Court of Appeals for the Third Circuit has decided an important question of local law in conflict with applicable local court decisions. The specific conflicts have been pointed out in the Petition for Certiorari and will be further treated in argument under the questions before this Court for decision.

III.

A full history of this case appears in the foregoing petition, Section I.

IV.

**First Specification of Error.**

The United States Circuit Court of Appeals for the Third Circuit erred in sustaining and in affirming the position

of the District Court of the United States for the Eastern District of Pennsylvania, where it held, that the agreement between the petitioner and the bankrupts was a conditional sale and not a bailment lease (R. 159, 165).

**Summary.**

The agreements in question (R. 11, 12) provide:

> "We, the petitioners, will also rent you our machinery, now used by you at 2218 Emerald Street at ½% per month to cover interest based upon value of $3069.34. * * * You agree to purchase our machinery at the expiration of this agreement, or at any earlier date you may desire, at the aforementioned price of $3069.34 and agree that all materials of every transaction shall remain the property of the Bright Brooks Lumber Company and John Cockey and Son, we agree to turn it all over to you at any time you pay us the amount due."

**Argument.**

This type of agreement has been held to be a bailment in *General Motors Acceptance Corp.* v. *Horton,* 85 F. (2d) 452; wherein the court held:

> "The contract is in the form of a lease and provides for a definite term, a fixed rental, and an agreement for the return of the automobile at the end of the term. It is true that the so-called rentals amount to more than the regular purchase price of the automobile, which was $827, while the total rentals amount to $952. The first installment of rental due upon delivery was $268, and the following rentals were $58 per month. When the total rentals were paid, the 'lessee' either had to surrender the automobile, or he could purchase it for the nominal sum of $1. The contract further provided that the appellant might repossess or 'resell' the automobile upon noncompliance by the lessee with the terms of the contract. The term 'resell' indicates that the

first transaction was a sale and not a bailment lease, but that term stands alone and is not in harmony with the other provisions of the contract, and is not decisive of the issue.

It is evident that the parties to the contract intended by it to accomplish two results: first to retain, in the lessor, title to the automobile as against the bankruptcy or other unfortunate circumstances of the lessee; and, secondly, to provide that the lessee might, after payment of all the rentals purchase the automobile for a nominal sum. It must be admitted that this transaction in fact, though not in form, amounted to a conditional sale. But to construe such contracts as bailment leases is a policy, regardless of what may be thought of it as a principle of law or business, which has long been pursued in Pennsylvania, and her courts have uniformly sustained them as bailment leases. General Motors Acceptance Corporation *v.* Hartman, 114 Pa. Super. 544, 174 A. 795; Leitch *v.* Sanford Motor Truck Co. et al., 279 Pa. 160, 123 A. 658; Commonwealth *v.* Motors Mortgage Corporation, 297 Pa. 468, 147 A. 98. This court has felt constrained to follow the decisions of the Pennsylvania Courts in construing such contracts. Gotthold *v.* Crompton & Knowles Loom Works (C. C. A., 3rd Circuit), 5 Am. B. R. (N. S.) 908, 4 F. (2d) 50; Jacquard Knitting Machine Co. Vennell (C. C. A. 3rd Cir.), 21 Am. B. R. (N. S.) 524, 59 F. (2d) 496."

Nor does the fact that the agreement fails to provide for a return of the chattels at the end of the term, invalidate the agreement as a bailment. That was held by the Circuit Court of Appeals for the Third Circuit. In *Jacquard Knitting Machine Co.* v. *Vennell,* 59 F. (2d) 496, it was held:

"True, the third lease did not contain a stipulation for return of the machines at the end of the bailment. But the absence of such stipulation is not controlling, for, as said in Federal Sales Co. of Philadelphia *v.* Kiefer, 273 Pa. 42, 115 A. 454, 'it is unnecessary for a bailment lease to stipulate for a return of the property, and the absence of a provision to that effect in those

here in question is not controlling.' Stiles *v.* Seaton (200 Pa. 114, 49 A. 774), supra; Edwards' Appeal, 105 Pa. 103; Jones *v.* Wands, 1 Pa. Super. Ct. 269; Porter *v.* Duncan, 23 Pa. Super. Ct. 58."

Furthermore the fact that the contract contains an agreement by the bailor to sell the chattels to the bailee does not invalidate it as a bailment and this was held by the Supreme Court of Pennsylvania in *Styles* v. *Seaton,* 200 Pa. 114, where the Bailor agrees to rent and the said William C. Seaton and Henry C. Barnes agreed to hire the described chattels for monthly rentals which over the period of the entire term of bailment amounted to the contract price, upon the payment of which title would pass to the bailee.

It is respectfully submitted therefore, that a comparison of the instant case with the above cited cases discloses an irreconcilable conflict and that the Circuit Court of Appeals for the Third Circuit in the instant case erred in not following the prior decisions of both the Circuit Court of Appeals and the Supreme Court of Pennsylvania.

V.

**Second Specification of Error.**

The United States Circuit Court of Appeals for the Third Circuit erred in affirming the District Court of the United States for the Eastern District of Pennsylvania wherein it was held (R. 157, 158):

> "No consideration was shown for the transfer of the business from Louis Dickman to Anna Dickman, that she had no title to convey to Bright Brooks Lumber Company by the alleged Bill of Sale of April 18, 1938 and accordingly the Bright Brooks Lumber Company took no title which it could retain."

**Summary.**

One of the bankrupts, Louis Dickman, had, at several different places in Philadelphia, under his own proper name

been engaged in the furniture manufacturing business for some years prior to 1938 (R. 76, 77), in which he used a part of the machinery involved in this action. In March, 1938, Anna Dickman started business on Emerald Street, in the City of Philadelphia, under the trade name of "Emerald Furniture Manufacturing Company", which she registered under the Fictitious Names Act of Pennsylvania, specifying herself as owner. Then, Anna Dickman executed a Bill of Sale of the machinery to the Bright Brooks Lumber Company the petitioner, for a good and valuable consideration. The petitioners then leased the machinery back to Anna Dickman without change of possession.

In June, 1938, Louis Dickman and Jack W. Robinson formed a partnership to conduct a furniture manufacturing business under the trade name or style of Emerald Furniture Manufacturing Company on North 17th Street, Philadelphia. Anna Dickman being in default under her agreement with the petitioners, the machinery, on the instructions of the petitioner was moved from Emerald Street on or about July 15, 1938 and delivered to the bankrupts at their place of business on North 17th Street. It was in connection with this latter transfer of possession that the agreement between the petitioner and the bankrupts, which is the subject of consideration under the First Specification of Error, was concluded. Thereafter, the bankrupts were in default in their agreement with the petitioner and on May 3, 1939, were petitioned into bankruptcy.

**Argument.**

It is conceded by the petitioner that Louis Dickman's creditors prior to the filing of the petition in bankruptcy could have attacked the validity of the transaction between the petitioner and Anna Dickman. It is also conceded that Anna Dickman's creditors could have done the same thing. However, this is a controversy between the Trustee in Bank-

ruptcy of Louis Dickman and Jack W. Robinson, individually and as co-partners trading as Emerald Furniture Manufacturing Company. Anna Dickman had no creditors and Louis Dickman had no prior creditors. Obviously, therefore, the only creditors who could have attacked the transaction could not appear because they did not exist. Whether or not there was any consideration to support the transfer of the machinery from Louis Dickman to Anna Dickman is immaterial in this case and has so been held by the Appellate Court of Pennsylvania.

In *Kindig* v. *Wertz,* 116 Pa. Super. Ct. 456; *Gallagher* v. *Motors Finance Corp.,* 105 Pa. Super. Ct. 335, and *Riccardi Motor Car Co.* v. *Weinstein,* 98 Pa. Super. Ct. 41, it was held: That a claimant to chattels did not have to prove his title as to the whole world but only as to those appearing in the action. Where parties to an action, which in this case was the petitioner for claimant and Trustee in bankruptcy, defendant asserted no rights beyond those existing in Anna Dickman. In *Commercial Car Company* v. *Murphy & Son,* 275 Pa. 105, it was held: The Trustee in Bankruptcy in this case is not admitted to assert title as against the petitioners. As Trustee in Bankruptcy, Section 70, he steps into the shoes of the bankrupts before the bankrupts are precluded from asserting title as against the petitioner by virtue of their agreement. Whatever rights the Trustee in Bankruptcy may assert is under Section 70 (e) of the Bankruptcy Act as an attaching creditor.

Therefore, under the decisions in Pennsylvania above quoted, it was not necessary for the petitioner to prove Anna Dickman's title but that she received consideration to support the transfer of her title to the petitioner.

**Conclusion.**

Summarizing the whole of the Brief, it is respectfully submitted that the court erred in holding that the agree-

ment between the petitioner and the bankrupts was a conditional sale rather than a bailment lease; that the petitioners had failed to prove Anna Dickman's title and in refusing to hold that the order of the District Court dismissing the petitioner's reclamation petition was in error.

The decision of the United States Circuit Court of Appeals for the Third Circuit in the instant case, if allowed to stand, will throw such grave doubts on the legality of bailment leases in Pennsylvania as to disturb the chattels and rights of thousands of persons holding title under such agreements of inestimable value.

It is therefore respectfully submitted that this case is one calling for the exercise of this Court of its supervisory powers by granting a Writ of Certiorari and thereafter reviewing and reversing the decision of the lower court.

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